THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.21036 of 2006

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ORDER: (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

The petitioners seek Writ of *Certiorari* to quash the impugned order dated 28-11-2005 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (For short "the Act"), in L.G.C. No.75 of 1999. The petitioners are the applicants, who filed L.G.C. No.75 of 1999 against the respondents 1 to 3 herein seeking their eviction after declaring them as land grabbers. At the culmination of enquiry and after having heard either side, the learned Special Court was of the view that the applicants failed to establish *prima facie* case even and that the respondents perfected their title by way of adverse possession and eventually dismissed the application.

The writ petitioners claimed that the land in an extent of Acs.3-39 guntas covered by Survey No.19/1 of Nizamabad village was purchased by them from their vendor under a registered sale deed dated 07-03-1960 and since then they had been in possession and enjoyment of the same till the first week of April, 1993. When the third respondent obstructed the applicants and grabbed the open site and got constructed a compound wall and quarters thereon, the applicants got a notice issued to the first respondent *qua* in his reply

claimed title over the land in dispute. When the applicants approached the Collector for demarcation of the boundaries of the land in dispute and when the Collector refused to do so, the applicants filed W.P. No.2479 of 1997 and obtained a direction from the High Court pursuant to which,
the Assistant Director Survey and Land Records carried the demarcation of boundaries and fixed the same. Subsequently,
the applicants got a legal notice dated 13-10-1998 issued to the first respondent calling him upon to vacate the land in dispute and pay damages at the rate of Rs.50,000/- per year. Simultaneously, the applicants also lodged a complaint before the Sub Inspector of Police, III Town, Nizamabad. Since there was no action, they filed application before the learned Special Court.

That application was resisted by the respondents claiming that the land in dispute has been in possession and enjoyment of the respondents since time immemorial and it was owned and possessed by the then Nizam Government Railway and after the merger of the Nizam State, the South Central Railway has been in possession of the same. Quarters were constructed in the year 1913 in a row leaving 49 feet of land along the boundary of the Railway property and a compound wall also to safeguard the said property was constructed.

The learned Special Court framed the following issues at the time of settlement of issues.

> "1. Whether the applicants are the owners of the application schedule property?

2. Whether the rival title set up by the respondents is true, valid and binding?

3. Whether the respondents, in any event, perfected their title by adverse possession?

4. Whether the respondents are land grabbers within the meaning of the Act?

5. To what relief?"

At the time of enquiry, one of the claimants was examined as P.W.1 and Exs.A-1 to A-9 were got marked. R.W.1 was examined on the side of the respondents, besides Exs.B-1 to B-15, Exs.X-1 to X-10 were got marked. Both the parties filed written arguments and appreciating the evidence on the point, the learned Special Court as aforesaid dismissed the application.

The grievance of the applicants seems to be that no opportunity was afforded to address oral arguments in elucidation of the written submissions made earlier and when application was filed for reopening the case for hearing the arguments, so as to enable the applicants to submit their oral arguments that application was eventually dismissed.

The learned Standing Counsel for the respondents, on the other hand, represents that oral submissions are not a
sine qua non and it is at the discretion of the Court to permit or not to permit. The learned Standing Counsel further represents that the findings of the learned Special Court are well founded and they do not call for any interference.

In view of the rival contentions, the point that arises for our determination is whether the impugned order is vitiated by not affording the necessary opportunity to make oral submissions by the applicants.

A perusal of the impugned order shows that both sides filed their written arguments in support of their rival claims.

The order does not read that both parties submitted their oral arguments. The conspicuous absence of such a mention in the order, in our considered view, supports the contention of the applicants that they have not been heard. The learned counsel for the writ petitioners represents that when an application, in fact, was filed requesting the learned Special Court to reopen the case for hearing the arguments and for filing reply arguments,

if necessary, that application was directed to be returned on

24-11-2005 on the premise that the matter since was reserved for judgment, the office was not empowered to enter that application.

The application, it may be mentioned, was specifically filed requesting the learned Special Court to reopen the case so as to enable the applicants to address their oral arguments.

The application was neither considered nor rejected by passing any order buttressed by any cogent reasons. The fact remains that the request of the applicants for affording an opportunity to address oral arguments was not considered.

Under the above circumstances, the impugned order is vitiated or not is the question to be considered. The learned counsel for the writ petitioners seeks to place reliance upon the Constitution Bench judgment of the Apex Court in ***P.N. ESWARA IYER ETC. ETC. v. THE REGISTRAR, SUPREME COURT OF INDIA***[1] in para 13 held thus:

> "We agree that public hearing is of paramount significance. Justice, in the Indian Republic, is public; and if judges shun the halls of court, read papers at home, confer in private and issue final fiats without listening to the bar as the representative of the seekers of justice, the rule of law could well darken into an arcane trick and back door diktats issued from 'robed' adjudicators stain the escutcheon of justice. We also agree that oral advocacy has a non-fungible importance in the forensic process which the most brilliant brief cannot match and the most alert judge cannot go without. The intellectual jallywork of intricate legal reasoning and impassioned sculpture of delicate factual emphasis may often be beyond the craftsmanship of pen and paper."

From the above it is obvious that parties cannot be denied of an opportunity to put forth their case before the Court. Consequence of the rejection of oral submissions so as to elucidate a point sought to be made out in the written submissions needs no emphasis, particularly, when the parties request time to make their submissions so as to explain written arguments, such a request cannot be foreclosed merely because the parties

submitted the written arguments. True, it is well within the discretion of the Court to refuse to afford such an opportunity, but such a discretion shall be exercised judiciously and shall be supported by cogent reasons. We can understand, if the learned Special Court refuses to grant further time for addressing oral arguments for any reason set forth *inter alia* in the order, but such is not the case here. The application filed specifically for that purpose was conveniently returned on the premise that the judgment was reserved. In that view of the matter, it is not legitimate to consider that the learned Special Court in exercise of its discretion rightly refused to grant any time for oral submissions, such a foreclosure of right without assigning any reasons cannot be considered as a valid exercise of the discretion by the learned Special Court. Discretion is conferred on the Courts so as to meet the situation and the discretion is to be exercised judiciously so as to avoid any arbitrariness, which might lead to legal anarchy. From the record it is very difficult to hold that the learned Special Court has exercised its discretion and rightly refused to grant further time or reopen the case for hearing oral arguments if any on either side. The contention of the learned Standing Counsel for Railways that it is not a *sine qua non* to afford an opportunity for addressing oral arguments, for the above reasons, cannot be countenanced.

The learned counsel seeks to place reliance upon the Constitution Bench judgment of the Apex Court in ***KRISHNA SWAMI v. UNION OF INDIA AND ANOTHER***[2]***.*** That was a case where the report of the inquiry committee constituted under Section 4(2) of

Judges Inquiry Act, 1968 was sought to be assailed on the premise that a copy thereof had not been supplied. The Apex Court by majority in ***SAROJINI RAMASWAMI (Mrs) v. UNION OF INDIA AND OTHERS***[3] dismissed the writ petition. Earlier to the filing of said writ petition, Public Interest Litigation was sought to be initiated before the Apex Court in the former judgment. Having regard to the circumstances and for the reasons mentioned *inter alia* therein, the Apex Court was of the clear view that the denial of oral hearing was justified. The judgment has not proceeded on the premise that no such opportunity need be given for addressing oral arguments. Discretion is given to the Court, having regard to the facts and circumstances, to consider or reject the request of oral submissions. Later judgment of the Constitution Bench of the Apex Court, in our considered view, is not falling foul with the earlier judgment of the Apex Court. The facts in the instant case are obvious it is not only the case where oral submissions have not been heard, nay a case where a specific request in regard to has not been considered, under the circumstances, it cannot be held that the learned Special Court has exercised its discretion validly and rejected the request for an opportunity to address oral arguments. The judgment of the Apex Court, sought to be relied upon by the learned Standing Counsel, for the above reasons,

has no application to the facts in the instant case. That ground itself is sufficient to vitiate the proceedings of the learned Special Court.

As can be seen from the rival claims of the parties

while it is a case of the applicants that they are the owners of the land in dispute having purchased the property by means of a registered sale deed dated 07-03-1960; it is the case of the respondents that they have been in possession of the land in dispute by constructing quarters thereon from 1913 onwards and thereby perfected their title by prescription. The learned Special Court refused to consider Ex.A-2, sale deed of the applicants, on the ground that the boundaries mentioned therein *inter alia* are not tallying with the boundaries as mentioned in the schedule. An endeavour has been sought to be made before us to demonstrate that a slight discrepancy in one of the boundaries as mentioned in the sale deeds *qua* the boundaries as given in the schedule will not be making all the boundaries as discrepant. It appears to be the grievance of the applicants that the conclusion reached by the learned Special Court that the boundaries in its case have not been tallied is grossly incorrect. The way in which the learned Special Court sought to avoid Ex.A-2 title deed appears to be not correct. At the end, the learned Special Court was of the clear view that the respondents perfected their title by way of adverse possession. Possession *per se* for however length it might be, unaccompanied by the necessary adverse animus will not confer any prescriptive title nor does it extinguish the right in the property. He who pleads adverse possession must show before the Court that his possession is adverse to the real owner from a particular point and since then it is continuous uninterrupted and to the knowledge of the real owner for over the statutory period of 12 years. That indeed extinguishes the right and

confers the right by means of prescriptive title by means of adverse possession.

This principle, which is trite, seems to have not been properly appreciated by the learned Special Court. It obviously swayed by long possession from 1913 onwards and the fact that quarters for the employees have been constructed by the Railways surrounded by a compound wall seems to have weighed very much with the learned Special Court. We are not happy with the conclusion thus reached by the learned Special Court. For the above reasons,

the matter requires a fresh look before passing appropriate orders on merits.

In the result, the Writ Petition is allowed. The judgment of the learned Special Court passed in L.G.C. No.75 of 1999 dated

28-11-2005 is hereby set aside and the matter is remitted to the Special Court for fresh consideration by giving an opportunity to both the parties to address their oral arguments and to supplement the same, if any, by means of written arguments. It is open to the Special Court to consider in its discretion, if any fresh opportunity is required to be given to the parties to adduce any further evidence or to amend the pleadings suitably. Under the circumstances costs shall abide the result in the main land grabbing case.

T. CH. SURYA RAO, J

Date: 03-01-2007

G. CHANDRAIAH, J

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[1] AIR 1980 SUPREME COURT 808

[2] (1992) 4 Supreme Court Cases 605

[3] (1992) 4 Supreme Court Cases 506